ments generally cannot be said to be fully settled, and this is particularly true in this country as to easements of light and air. The right to light and air seems in many respects to be different in its nature from easements relating to artificial erections on the servient estate, such as drains, gutters, pipes, &c., or rights of way and the like.

"As to *light* and *air*, I am free to say that I do not believe the rule, as applied to our situation and circumstances, a sound one, which holds that under any circumstances this right can *by implication* be burdened upon an adjoining estate, as to prevent the owner thereof from building upon or improving it as he pleases. I would reverse the rule and hold that he who claims that the ten * * * feet adjoining him * * * shall remain vacant and unimproved, should found such claim upon an express grant or covenant.

"This rule is simple. Grantor and grantee would both know that the deed is the measure of their rights. Is it any hardship upon the purchaser to secure by *express* grant, lights so valuable to him and so detrimental to his grantor,—rights which, unless limited and defined by written stipulations, are of uncertain extent and uncertain duration? * * * A denial of an easement of mere implication, as respects light and air, may, in my judgment, well be, without denying that other easements of a different character may, and in some cases should, be held to exist by implication." [The point was not, however, decided, since it was held the circumstances negatived conclusively the presumption of the implied easement.]

It is a well-known principle of law that in cases of doubt the words of a grant are to be interpreted against the grantor. This principle, in its application to the subject of which we are treating, is illustrated by the case of the *United States* v. *Samuel Appleton*, 1 Sumn. 492. In 1808 a block of buildings was built, consisting of a centre building with wings. There was a piazza in front of the centre building, over which swung doors in the wings. In 1811 the wings were sold to the defendants, and the centre building was sold in 1816 to the United States, who had occupied it under a lease from 1808 to that time. *Held*, that the defendants were under the terms of the grant entitled to the use of the side-doors as used at the time of the conveyance, independently of the lapse of time. The language of the conveyance was, "the above [wing] with all the privileges and appurtenances." STORY, J.: "The law gives a reasonable intendment in all such cases to the grant; and passes with the property all those easements and privileges, which at the time belong to it, and are in use as appurtenances. * * * A man sells a dwelling-house with windows then looking into his own adjacent lands. There can be no doubt that the grant carries with it the right to the enjoyment of the light to those windows; and that the grantor cannot, by building on his adjacent land, entitle himself to obstruct the light, or close up the windows. * * * In truth, every grant of a thing naturally and necessarily imports a grant of it, as it actually exists, unless the contrary is provided for."

SYDNEY BIDDLE.

Supreme Court of Errors of Connecticut.

ISAAC STROUSE *v.* HENRY N. WHITTLESEY, JR.

The defendant was driving through a city street in the evening, on the right hand side of the street, at a moderate speed, and in passing a team standing on the same side of the road was compelled to turn into the middle of the street, and in

so doing necessarily occupied about two and a half feet of the left hand side of the street. In thus passing around the standing team he came into collision with the plaintiff's vehicle which was coming towards him. There was ample room for both teams, but neither driver discovered the other till the moment of collision, and both the plaintiff and defendant were using ordinary care. *Held*, that the defendant was not liable for the damage.

Such a case is one merely of misfortune and accident, where each party must sustain the damage which happens to befall him.

TRESPASS ON THE CASE, for an injury by the negligent driving of the defendant; brought to the Court of Common Pleas of New Haven county. Facts found and case reserved for advice. The case is sufficiently stated in the opinion.

Driscoll and *Asher*, for the plaintiff.

Wright and *H. L. Harrison*, for the defendant.

PHELPS, J.—The record in this case presents a very clear case of injury without proof of such negligence as renders the defendant legally responsible. The plaintiff and defendant were passing in opposite directions through Orange street, in the city of New Haven in the evening, both driving at moderate speed, and in the exercise of such care as is ordinarily observed by drivers, and each on the proper side of the street. The street is twenty-six feet wide at the place of contact. Of that space eight feet on the side the defendant was driving was occupied by a standing team. He turned into the middle of the street only so far as was reasonably necessary to pass the standing wagon, and in so doing occupied two feet and four inches beyond the centre line of the street. He did not discover the plaintiff's vehicle until the instant of the collision. The plaintiff had the remainder of the street, ten feet and eight inches, which was double the room which he actually required.

Each party followed the rule which required him to keep to the right hand side of the way, and but for the standing team no collision would have occurred. The defendant had a right to pass that team, and if necessary for that purpose, to cross the centre line of the street, provided he observed proper care in doing so, and saw that sufficient room was reserved for any team to pass in safety which might be coming from the opposite direction. He appears from the finding to have done his duty in this respect, and the facts disclose a case of misfortune and accident, without negligence or fault, in which the parties must respectively sustain the damage which happened to befall them.

We advise the Court of Common Pleas to render judgment for the defendant.

We publish the foregoing case because it covers, and, as we think, correctly decides an important question of law; one that occurs almost hourly in some portion of our widely-extended country. And there seems to be some kind of impression among the profession, both here and in England, that one may become liable to an action of trespass for direct injury to another, either by falling accidentally upon him, or having his horses or team rush upon him, in the street, even where he is guilty of no negligence. We infer the existence of this impression, as we have just stated, from the continued institution of actions of this character, as will be sufficiently apparent from the principal case, and the recent case of *Holmes and Wife* v. *Mather*, in the Court of Exchequer, June 24th 1875, 23 W. R. 869, where the question is very learnedly discussed both by the court and bar. After discussing the matter at some length, BRAMWELL, B., reaches the conclusion that when the damage is inflicted by direct force, and the defendant had no purpose of doing the act, and was guilty of no negligence, no action will lie. In this case the defendant was in the carriage with his driver, and "the horses were startled by a dog, and, without any fault of the defendant or the groom, became unmanageable and ran away down the street. The groom requested the defendant to sit still and not to interfere in any way. On reaching the end of the street, where it was crossed by another, the horses swerved to the right, and were in danger of running into a shop window; the driver thereupon attempted to turn them still more to the right, in order to make them go down the cross street," which would have avoided the accident; but only partially succeeding, they ran against "the female plaintiff and caused her serious injury." A majority of the court considered the act of the groom to be that of the defendant, as he was present and made no dissent. CLEASBY, B., said: "The act of the groom in guiding the horses was not the act of the defendant;" but all agreed, as there was no wrong intent and no negligence or want of proper and judicious effort to escape doing the injury, or any injury to any one, there could be no recovery. Baron BRAMWELL, than whom no living judge is more expert in hitting the exact point of all cases before him, said: "For the convenience of mankind, in carrying on the affairs of life, people, as they go along roads, must expect and put up with such mischief as reasonable care on the part of others cannot avoid, otherwise we should have actions every time a dress, or even a freshly-painted door, is splashed by a passing vehicle." The question was early considered, in *Vincent* v. *Steinhour*, 7 Vt. 62, with the conclusion that no action can be maintained where the injury complained of results from unavoidable accident, and no blame is imputable. WILLIAMS, Ch. J., gave a most satisfactory opinion, citing many illustrations, and the following cases: *Gibbons* v. *Pepper*, 4 Mod. 405; *Wakeman* v. *Robinson*, 2 Bing. 213; *Goodman* v. *Taylor*, 5 C. & P. 410, and some others.

There is an important point ruled in the English case, that the defendant is not liable for doing all he can in such case to ward off injury from any one, even though in consequence the blow ultimately falls upon one who would have escaped if no such efforts had been made. It is like the case of the squib in *Scott* v. *Shepherd*, 2 W. Bl. 892; 2 Sm. L. C. 210. *Fletcher* v. *Rylands*, L. Rep., 1 Exch. 286, and *Hammark* v. *White*, 11 C. B. N. S. 588, are authorities for the defendant in this class of actions. I. F. R.